UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

THE ARUNDEL CORPORATION,
BROOKLYN TERMINAL[1]

Employer

and Case 5-RD-1382

JAMES E. RHODES, JR.

Petitioner

and

INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL 37, AFL-CIO[2]

Union

DECISION AND DIRECTION OF ELECTION

The sole issue in this proceeding is whether the name of the Employer is "The Arundel Corporation, Brooklyn Terminal" or whether, it is, as the Union contends, "The Arundel Corporation and Arundel Sand and Gravel as a single employer."[3] The

[1] The name of the Employer appears as amended at the hearing.

[2] The name of the Union appears as amended at the hearing.

[3] At the hearing, the Union presented three issues: (1) whether the Employer is "The Arundel Corporation, Brooklyn Terminal" or whether it is "The Arundel Corporation and Arundel Sand and Gravel as a single employer"; (2) whether the petitioned-for unit is appropriate or whether it constitutes an accretion to an existing unit at the Employer's Havre de Grace, Maryland location; and (3) whether the Employer is in the building and construction industry such that application of the *Daniel* eligibility formula would be appropriate. On November 10, 2005, the Union filed a unit clarification petition seeking to clarify the existing, separate units at the Employer's Havre de Grace, Maryland, location and the Brooklyn, Maryland location involved herein, into a single unit. On November 21, I issued a Notice to Show Cause why the petition should not be dismissed. Thereafter, on November 23, the Union withdrew its UC petition. In its post-hearing brief in the instant proceeding, the Union did not identify the accretion issue as an issue to be decided herein. For these reasons, I find the issue of accretion has been resolved and is not discussed in this decision. Additionally, in its post-hearing brief, the Union stated it no longer contends that the Employer is in the building and construction industry. Thus, the only remaining issue is whether the name

Employer and the Union have been parties to successive collective-bargaining agreements for at least thirty years. The most recent collective-bargaining agreement covering the Brooklyn unit involved herein expired on April 30, 2004.[4]

The Petitioner seeks a decertification election among the approximately two employees in the Brooklyn unit.[5] The Petitioner and the Employer contend that the Employer's correct name is "The Arundel Corporation, Brooklyn Terminal." The Union contends the Employer's correct name is "The Arundel Corporation and Arundel Sand and Gravel as a single employer." In support of its contention, the Union relies on the Board's decision in *Arundel Corp.*, 252 NLRB 397 (1980), in which the Board found, based on the facts of that case regarding the then-new facility in Havre de Grace, that the Arundel Corporation and the Arundel Sand and Gravel company were a single employer. The Union further argues that the labor relations of both companies are centralized, that the payroll for both entities is handled by Florida Rock Industries, the parent company, and that the operations of the two entities are interrelated.

I have carefully considered the evidence and arguments presented by the parties, at the hearing and on brief, regarding these issues. As discussed below, I conclude that the correct name of the Employer for purposes of this proceeding is "The Arundel Corporation, Brooklyn Terminal."

The Union presented testimony from the Petitioner, and Edwin M. Rider III, the Employer's safety director. The Employer also presented testimony from Edwin M. Rider III. The Petitioner did not call any witnesses.

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of the Employer is properly set forth as "The Arundel Corporation, Brooklyn Terminal" or whether it is properly set forth as "The Arundel Corporation and Arundel Sand and Gravel as a single employer."

[4] I take administrative notice that the collective-bargaining agreement which covers employees in the Havre de Grace unit, by its terms, expires on November 3, 2006.

[5] All parties stipulated that the bargaining unit set forth in the most recent collective bargaining agreement is: "All full-time first class operators, operator A, operator B, and pushup operators, employed by the Employer at its Baltimore, Maryland facility, but excluding all office clerical employees, scale clerks, dispatchers, lab technicians, professional employees, managerial employees, guards, and supervisors, as defined by the Act."

FACTUAL SETTING

The Arundel Corporation, Brooklyn Terminal is a Maryland corporation engaged in the retail and non-retail sale and distribution of sand and gravel material at its facility in Brooklyn, Maryland, which is also referred to as its Baltimore, Maryland facility. The Brooklyn facility involved, herein, stores materials such as crushed stone, gravel, and different varieties of sand that are shipped from other locations, including from the Havre de Grace facility, a quarry. The materials are off-loaded at the Brooklyn facility, where they are stored, and then sold and loaded onto customers' trucks. The Brooklyn facility employs a first class operator, who operates a crane; one operator A/operator B, who loads the materials onto the trucks; a dispatcher/senior scale clerk, who oversees the loading of the trucks; and a quality control technician, who tests the materials being distributed to ensure that they comply with the customers' specifications.

As noted above, full-time first class operators, operators A, operators B and pushup operators at the Brooklyn facility are represented by the Union. The Employer and the Union have been parties to successive collective-bargaining agreements for at least the past thirty years. The most recent collective-bargaining agreement was in effect from May 1, 2003 to April 30, 2004. The Employer and the Union have not entered into a successor collective-bargaining agreement.

Also as noted above, the Union represents a separate bargaining unit at the Havre de Grace facility, at which a collective-bargaining agreement currently is in effect. The Board, in its decision *Arundel Corp.*, 252 NLRB 397 (1980), found that the employer at the Havre de Grace facility was "The Arundel Corporation and Arundel Sand and Gravel as a single employer." The "Arundel Sand and Gravel Company" was revived sometime in 1977 or 1978 by officials of "The Arundel Corporation" in order to operate the Havre de Grace quarry. "Arundel Sand and Gravel Company" is, like "The Arundel Corporation, Brooklyn Terminal," a subsidiary of Florida Rock Industries.

In finding "The Arundel Corporation" and "Arundel Sand and Gravel" to be a single employer, the Board adopted the administrative law judge's decision, which relied, in part, on the fact that all of the equipment used at the Havre de Grace facility was owned by and registered in the name of "The Arundel Corporation." 252 NLRB at 399.

Also significant was the fact that the Havre de Grace quarry was owned by "The Arundel Corporation" and all licenses and permits were issued in the name of "The Arundel Corporation." *Id.*

ANALYSIS

A single employer exists where apparently separate entities operate as an integrated enterprise in such a way that "for all purposes, there is in fact only a single employer." *NLRB v. Browning-Ferris Industries*, 691 F.2d 1117, 1122 (3d. Cir. 1982). The principle factors that the Board considers in determining whether the integration is sufficient for single-employer status are the extent of: interrelation of operations, centralized control of labor relations, common management, and common ownership or financial control. *See South Prairie Construction Co. v. Operating Engineers Local 627*, 425 U.S. 800, 802 (1976); *Radio Union Local 1264 v. Broadcast Service*, 380 U.S. 255 (1965); *Mercy Hospital of Buffalo*, 336 NLRB 1282 (2001); *Grass Valley Grocery Outlet*, 332 NLRB 1449 (2000); *Mercy General Health Partners*, 331 NLRB 783 (2000); *Centurion Auto Transport*, 329 NLRB 394 (1999); *Alexander Bistritzky*, 323 NLRB 524 (1997); *Denart Coal Co.*, 315 NLRB 850 (1994); *Hydrolines, Inc.*, 305 NLRB 416 (1991); *Blumenfeld Theatres Circuit*, 240 NLRB 206, 215 (1979).

The most critical of these factors is centralized control over labor relations. Common ownership, while normally necessary, is not determinative in a single-employer status in the absence of such centralized policy. *Grass Valley Grocery Outlet*; *Mercy General Health Partners*; *Alabama Metal Products, Inc.*, 280 NLRB 1090, 1095 (1986); *Western Union Corp.*, 224 NLRB 274, 276 (1976). *Compare Dow Chemical Co.*, 326 NLRB 288 (1998), rejecting single-employer status based on common ownership alone.

A determination of single-employer status does not determine the appropriate bargaining unit. Indeed, the general rule is that the bargaining unit in which the decertification election is held must be coextensive with the certified or recognized unit. *Mo's West*, 283 NLRB 130 (1987); *WAPI-TV-AM-FM*, 198 NLRB 342 (1972); *Bell & Howell Airline Service Co.*, 185 NLRB 67 (1970); *W.T. Grant Co.*, 179 NLRB 670 (1969); *Campbell Soup Co.*, 111 NLRB 234 (1955).

Here, all parties stipulated that the most recent collective-bargaining agreement between the Employer and the Union covered the following unit: "All full-time first class operator, operator A, operator B and pushup operator, employed by the Employer at its Baltimore, Maryland facility, but excluding all office clerical employees, scale clerks, dispatchers, lab technicians, professional employees, managerial employees, guards and supervisors, as defined in the Act." Therefore, I find that this is the appropriate bargaining unit for the decertification election.

"The Arundel Company, Brooklyn Terminal" is the named employer in the collective-bargaining agreement covering the bargaining unit at the Brooklyn facility that expired on April 30, 2004.[6] "Arundel Sand and Gravel" was not a party to or named in that collective-bargaining agreement. Moreover, the Board's decision in *Arundel Corp.* does not apply to the facility involved in this case. That decision was limited to the Havre de Grace facility, and did not involve the operations at the Brooklyn facility. Rather, the decision specifically found that "Arundel Sand and Gravel" was established to operate the Havre de Grace facility, while noting that "The Arundel Company" operates the Brooklyn facility. 252 NLRB at 397-398. The Union bases its argument on the Board decision, and the testimony of one employee that he has transferred between the facilities, that payroll functions are centralized at Florida Rock Industries, and that labor relations are centralized.[7]

Edwin M. Rider, III, in his position as safety director for Florida Rock Industries, provides human resources support for the mid-Atlantic region of Florida Rock, which includes, among other companies, both "The Arundel Corporation" and "Arundel Sand and Gravel." As human resource support, Rider participates in arbitrations, negotiations, and the hiring and firing of employees.

I find that the above evidence, which focuses on the parent company Florida Rock Industries, is insufficient to establish that "The Arundel Company, Brooklyn Terminal"

[6] I take administrative notice of this collective-bargaining agreement which, although not entered into evidence at the hearing herein, was produced by the parties during the Region's investigation of Cases 5-CA-32742 and 5-CA-32767.

[7] It is undisputed, however, that the Brooklyn and Havre de Grace facilities have separate facility managers.

and "Arundel Sand and Gravel" operate at the Brooklyn terminal as an integrated enterprise such that there is, in fact, only a single employer.

Accordingly, based on all the foregoing, I find that the proper name of the Employer for purposes of this proceeding is that set forth in the most recent collective-bargaining agreement covering employees at the Brooklyn facility, "The Arundel Company, Brooklyn Terminal."

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's ruling made at the hearing are free from prejudicial error and are affirmed.

2. The Employer is an employer as defined in Section 2(2) of the Act and is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Union, International Union of Operating Engineers, Local 37, AFL-CIO, is a labor organization as defined in Section 2(5) of the Act.

4. The Petitioner asserts that International Union of Operating Engineers, Local 37, AFL-CIO, is no longer the bargaining representative of the employees as defined in Section 9(a) of the Act.

5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

6. The parties stipulated that The Arundel Corporation, Brooklyn Terminal, a Maryland corporation, is engaged in the retail and non-retail sales and distribution of sand and gravel material at its Baltimore, Maryland location. During the preceding 12 months, a representative period, the Employer purchased and received at its Baltimore, Maryland facility, products, goods and materials valued in excess of $50,000, directly from points located outside the State of Maryland.

7. I find the following employees of the Employer constitute a unit appropriate for the purpose of collective-bargaining within the meaning of Section 9(b) of the Act:

> All full-time first class operators, operators A, operators B and pushup operators employed by the Employer at its Baltimore, Maryland facility, but excluding all office clerical employees, scale clerks, dispatchers, lab technicians, professional employees, managerial employees, guards and supervisors, as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 37, AFL-CIO. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the election date and who retained their status as such during the eligibility period, and the replacements of those economic strikers. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have

access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); NLRB v. *Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 5, 103 South Gay Street, Baltimore, MD 21202, on or before **December 8, 2005**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (410) 962-2198. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

D. Notice of Electronic Filing

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, D.C. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site: www.nlrb.gov.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **December 15, 2005**. The request may not be filed by facsimile.

(SEAL)

/s/ WAYNE R. GOLD

Dated: December 1, 2005

Wayne R. Gold, Regional Director
National Labor Relations Board, Region 5
103 S. Gay Street
Baltimore, MD 21202